

REMARKS

Claims 1-25 and 27-36 were pending in the application prior to this amendment. Claims 1, 4, 6, 8-10, 12, 14, 15, 17, 27, 29 and 34-36 have been amended. Claims 32 and 33 have been cancelled. At least in light of the above amendments and the foregoing remarks, reconsideration and allowance of the claims is respectfully requested.

August 23, 2007 telephone interview

A telephone interview was conducted between Attorney Michael Cofield and Examiners Janet Suglo and Jeff West. During the telephone interview, an agreement was reached with respect to the 35 U.S.C. § 112, first paragraph rejections directed to claims 6, 8, 9 and 29, 34, 35, 36. No specific agreement was reached with respect to the 35 U.S.C. § 112, first paragraph rejections directed to claims 1, 4 and 12.

Applicant also compared the features of claims 32 and 33 to the main reference, Quist. The Examiners tentatively agreed that Quist did not appear to disclose the features of these claims; however, suggested that a more thorough review of Quist would be needed for verification. Given that the Quist reference has been used in three different Office Actions, in the interest of furthering prosecution the Examiners offered a follow-up telephone interview scheduled for August 30, 2007. Applicant thanks the Examiners for offering the follow up interview.

Claim Rejections – 35 U.S.C. § 112

Claims 1-13, 29, 31, and 34-36 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Claim 1 has been amended to change “expected traffic-based stress ratio” and “actual traffic based stress ratio” to “expected communication capacity utilization” and “actual communication capacity utilization”, which was indicated by the Examiners as being supported by the specification during the telephone interview.

With respect to the remaining rejected subject matter of Claim 1, Applicant notes that the mere rephrasing of a passage does not constitute new matter. *See* MPEP 2163.07, paragraph I. The remaining features of claim 1 merely clarify and rephrase the term “reference failure rate”. The rephrasing of the term “reference failure rate” is specifically supported in the present

specification, page 2, line 13 through page 4, line 13. It is believed that the above amendments to claim 1 resolve the rejections to claims 2-5, 7, 10-13 and 31.

Claims 6, 8, 9 and 29 have been amended according to the suggestion made by the Examiners during the telephone interview.

Claims 34 and 35 have been amended according to the suggestion made by the Examiners during the telephone interview.

Claim 36 has been amended according to the suggestion made by the Examiners during the telephone interview.

Claim 17 is rejected under 35 U.S.C. § 112, second paragraph.

No amendments have been made to claim 17. No antecedent basis is need for the cumulative reliability indication value.

Claim Rejections – 35 U.S.C. § 102

Claims 1, 4, 5, 7, 11, 13-17, 19-22, 24, 25, 27, 28 and 30-34 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Quist et al., U.S. Patent No. 6,199,018.

Claims 14 and 27 have been amended to include the features of claims 32 and 33 as suggested by the Examiners during the telephone interview. Quist does not disclose determining a second field-adjusted MTBF for the monitored device, the second field-adjusted MTBF determined by adjusting the first predetermined MTBF by the field-measured actual temperature and the field-measured actual electrical stress, the second field-adjusted MTBF being different than the first predetermined MTBF.

Quist discloses a monitoring device 12 that uses multiple factors to determine the hard drive's status. A low-level indication of the hard drive's status is displayed with a visual indicator; a green indicator is used when the hard drive is operating properly, a yellow indicator is used when the hard drive appears to be about to fail, and a red indicator is used when the hard drive is failing or has failed. *See* col. 3, lines 36-48. A high level indicator of the hard drive's status may provide more detailed information about the monitored hard drive's motors, including, how long the motors are expected to live, when the motors are expected to fail, and desired maintenance operations. *See* col. 5, lines 5-18. In other words, what Quist determines is a status of the monitored hard drive; not a field adjusted MTBF.

The Examiner noted during the interview that Weibull's law is one factor input into the monitoring device 12 to help the monitoring device figure out the status of the monitored hard drive. Col. 19, lines 29-67. However, Weibull's law is not an MTBF, and even if it were, the monitored device 12 does not output a second different MTBF based on the input Weibull's law.

Even if the device 12 did output the claimed field-adjusted MTBF (which it does not because it does not output an MTBF), there is no information about the details of *how* such an alleged field-adjusted MTBF would be determined by the device 12. Applicant notes that claim 14 does not just recite the broad idea of outputting a field-adjusted MTBF, but rather recites *how* the field-adjusted MTBF is determined.

In contrast, claim 14 includes the feature of means for determining a second field-adjusted MTBF for the monitored device, the second field-adjusted MTBF determined by adjusting the first predetermined MTBF by the field-measured actual temperature and the field-measured actual electrical stress, the second field-adjusted MTBF being different than the first predetermined MTBF. Thus, claim 14 should be allowed. Claims 15-17 and 19-21 are dependent and should also be allowed. Claim 32 has been cancelled. Claims 22, 24 and 25 include similar features and should be allowed for at least similar reasons. Claim 27 has been amended and should be allowed for at least similar reasons. Claims 28 and 30 are dependent and should also be allowed. Claim 33 has been cancelled.

Claim 1 has been amended for clarification. Quist fails to disclose at least the feature of outputting an instantaneous failure rate that is a first mathematical product of the inputted reference failure rate, the temperature stress adjustment factor and the electrical stress adjustment factor.

It is unclear where the Office Action is alleging that Quist discloses the monitoring device 12 outputting an instantaneous failure rate. For example, it seems that Office Action is stating that the color of a red/yellow/green indicator light is a "rate", a life expectancy of a hard drive motor is a "rate", an expected date of failure of a hard drive motor is a "rate", or desired maintenance operation is a "rate". None of these outputs from the monitoring device 12 are *rates*, let alone failure rates, because *they are not measures of a number of occurrences over a unit of time*. A word search reveals that Quist only uses the term *rate* in reference to sampling rate, which is not a failure rate. Therefore, it would be helpful for crystallizing any remaining issues if any additional Office Actions relying on Quist would precisely identify what parts of

Quist are alleged to disclose the monitoring device 12 outputting a failure *rate* for the monitored hard drive.

Even if any of these outputs were instantaneous failure rates (which they are not), since no details of how the alleged reference failure rate (apparently Weibull's law) is used to calculate them, Quist does not suggest the specific claimed details of *how* the instantaneous failure rate is determined. For example, Quist does not disclose multiplying Weibull's law by a field-measured temperature stress adjustment factor and a field-measured electrical stress adjustment factor.

In contrast, claim 1 includes the feature of outputting an instantaneous failure rate that is a first mathematical product of the inputted reference failure rate, the temperature stress adjustment factor and the electrical stress adjustment factor. *See* col. 20, lines 9-15. Thus, claim 1 should be allowed. Claims 4, 5, 7, 11, 13, 31 and 34 are dependent and should also be allowed.

Claim Rejections – 35 U.S.C. § 103

Claims 10 and 23 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Quist, et al. in view of U.S. Patent No. 5,802,592 (Chess, et al.).

Claims 10 and 23 are dependent and should be allowed for at least the same reasons as their parent claims as discussed above.

Claims 6, 8, 9 and 29 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Quist, et al. in view of U.S. Patent No. 5,974,363 (Gammel et al.).

Claims 6, 8, 9 and 29 are dependent and should be allowed for at least the same reasons as their parent claims as discussed above.

Claim 18 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Quist, et al. in view of U.S. Patent No. 6,516,282 (Hedlund et al.).

Claim 18 is dependent and should be allowed for at least the same reasons as its parent claim as discussed above.

Claim 35 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Quist, et al. in view of U.S. Patent No. 5,740,380 (LaBerge et al.).

Claim 35 is dependent and should be allowed for at least the same reasons as its parent claim as discussed above.

CONCLUSION

For the foregoing reasons, reconsideration and allowance of all pending claims is requested. The Examiner is encouraged to telephone the undersigned at 503-701-0862 if it appears that an interview would be helpful in advancing the case.

Respectfully submitted,

STOLOWITZ FORD COWGER LLP

/Michael A. Cofield/

Michael A. Cofield
Reg. No. 54,630

STOLOWITZ FORD COWGER LLP
621 SW Morrison Street, Suite 600
Portland, Oregon 97205

Customer No. 73552